Exhibit 2

1   UNITED STATES DISTRICT COURT

2   NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

3

4   IN RE: HIGH-TECH EMPLOYEE   No. 11-CV-2509-LHK

5   ANTITRUST LITIGATION

6   _____

7

8   CONFIDENTIAL PORTIONS DESIGNATED

9

10   Continued Videotaped Deposition of EDWARD E.

11   LEAMER, PH.D., Volume 3, taken at the offices

12   of O'Melvey & Myers LLP, Two Embarcadero Center,

13   Suite 2800, San Francisco, California commencing

14   at 9:03 a.m., on Monday, November 18, 2013,

15   before Leslie Rockwood, RPR, CSR No. 3462.

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24   JOB No. 1765129

25   PAGES 857 - 1169

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 1         A.   That's correct.

 2         Q.   And it took that data and it was trying to

 3    figure out how the compensation for an individual changed

 4    year-to-year; correct?

 5              MR. GLACKIN:   Object to the form.                15:55:26

 6              THE WITNESS:   This is just computation of the

 7    average salary in one year and average salary in the

 8    other and computing the percent difference.   That's what

 9    I said.   That's the mean percent difference in this data

10    set.

11              2002, that minus 4.7 is a reference to the mean

12    change in compensation from 2001 to 2002.

13         Q.   BY MR. MITTELSTAEDT:   For all the employees?

14         A.   All 58,465 employees.

15         Q.   At all seven defendants?                         15:55:52

16         A.   At all seven defendants.

17         Q.   But it's Econ 1 started off with individual

18    compensation data for those employees and then

19    aggregated; correct?

20         A.   That's correct.                                  15:56:04

21         Q.   Now did Econ 1 do that on an individual company

22    basis?   In other words, instead of aggregating these

23    results for all seven companies together, aggregated for

24    each company separately?

25         A.   That was not something that I requested them to  15:56:27
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1   do. This is a preliminary back-of-the-envelope

2   calculation.

3   Q. Sir, the only question is: Did you ask Econ 1,

4   or to your knowledge, did Econ 1 do this on a company

5   basis rather than on a seven-company basis?   15:56:42

6   A. Not to my knowledge. I recall went through this

7   before in an earlier deposition.

8   MR. MITTELSTAEDT: Let me move to strike that as

9   nonresponsive.

10   Q. This figure did not make any distinctions among   15:56:58

11   defendants; correct?

12   A. That's correct.

13   Q. And that's because you chose not to ask Econ 1

14   to not make distinctions between defendants; correct?

15   A. I think "chose" would be a somewhat biased   15:57:11

16   characterization of what I asked Econ 1 to do.

17   Q. Well, did you --

18   A. I wanted -- my goal was to get a sense of the

19   total damages of -- a quick sense of what the total

20   damage figures might be, and therefore, I asked them to   15:57:26

21   prepare this number.

22   Q. Did you consider at all asking them to do the

23   same thing for the separate defendants?

24   A. No, I did not.

25   Q. Were you aware or did you think that there were   15:57:42

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1   distinctions between the defendants with respect to the

2   average percent change in total compensation

3   year-to-year?

4   A.   This is not the final work. This is step one.

5   And of course I was aware that there are differences   15:57:55

6   among the defendants.

7   Q.   Sir -- okay.

8   Did you ever look at what the average percent

9   change in compensation was for the individual companies

10   as opposed to this exercise in Figure 19, which was for   15:58:16

11   all seven companies aggregated?

12   A.   I seem to recall that Dr. Murphy had that

13   embedded in one of his reports.

14   Q.   Okay. Did you ever look at that before you saw

15   what Dr. Murphy did?   15:58:29

16   A.   No, I did not.

17   Q.   Would that have been a difficult task for you to

18   do or for you to ask Econ 1 to do?

19   A.   I don't know how you want to measure difficulty,

20   but if you want to measure difficulty compared to value,   15:58:43

21   the answer is it was very difficult compared to value.

22   It served no function to do that desegregation with

23   regard to this calculation.

24   Q.   How would Econ 1 have gone about doing this

25   exercise for separate companies instead of aggregating   15:58:58

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1   all seven together?

2   Do you have the question in mind, sir?

3   A.   I'm trying to read the -- exactly what was done

4   so that I give a correct answer to your question. It's a

5   strictly mechanical exercise, but I want to think about   15:59:54

6   it for a minute as to whether you would use the overall

7   level of employees or whether you would talk about how

8   each firm responded to the downturn of 2003 and -4.

9   At any rate, it's not a difficult calculation.

10   Q.   How long would it take them to do it?   16:00:16

11   A.   I don't know. A couple hours.

12   MR. MITTELSTAEDT: Let me show you Exhibit 113.

13   (Exhibit 113, Exhibit 19, Average Percent Change

14   in Total Compensation, marked for

15   identification.)

16   Q.   BY MR. MITTELSTAEDT: Have you seen that before?

17   A.   This seems familiar.

18   Q.   What is that?

19   A.   This is the desegregation that we're talking

20   about.   16:00:44

21   Q.   And you understand this is basically the same

22   thing as your Figure 19, but it's done separately for

23   each company.

24   Do you see that?

25   A.   I do see that.   16:00:57

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1   Q.   Now in your first expert report at paragraph

2   139, if you could look at that, sir. Paragraph 139 of

3   your first report.

4   A.   Yes.

5   Q.   This is the same page as Figure 19 appears on.   16:01:17

6   You say in the middle of the paragraph, "Next comes the

7   out-of-place small 0.5 percent increase in 2005

8   coincident with the start of the non-compete agreements."

9   A.   Correct.

10   Q.   Do you see that?   16:01:31

11   A.   Correct.

12   Q.   And let's just walk through Figure 19. What

13 you're doing there, the information you draw from Figure

14 19 is you look at the mean change in total compensation

15 for all seven companies aggregated for 2004 and 2011, and   16:01:52

16 you take that as your base year or your base period;

17 right?

18   A.   Well, I'm trying to recall what I did, but I

19 would have called the base period is the period that is

20 used to determine what the but-for compensation increase   16:02:17

21 would have been. So I see the mean is 0.5 in 2005 and

22 the undercompensation is 9.5. So somewhere there's a

23 10-percent hypothetical for 2005.

24   Q.   Okay. Do you remember how you got that

25 10 percent?   16:02:35

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1   A. That's what I was trying to identify when I was

2 taking a little extra time trying to find out where --

3 where in these paragraphs is that revealed. And I can't

4 quite see it, but the point of this is to demonstrate the

5 logic, not the numbers. The logic is the before, during,   16:03:10

6 and after comparison.

7   So what I'm trying to do is to show you how the

8 before number, say 2004, the 10.3 number, could be used

9 to say hypothetically why would 2005 be different from

10 2004.   16:03:26

11   Q. Okay.

12   A. So that's just about trying to communicate to

13 everybody what I'm doing here, which is a before, during,

14 and after comparison. It's not meant to be a calculation

15 of damages, but it's meant primarily to illustrate the   16:03:37

16 approach.

17   Q. I think what you did was you took 2004, the

18 change, the mean change of 10.3, and the 2011 mean change

19 of 9.7 and averaged the two.

20   A. Okay.   16:03:55

21   Q. Do you see that comes out to 10, sir?

22   A. Yeah, that comes out to 10. I don't see where

23 it says that, though.

24   Q. And then in 2005, the mean change in total

25 compensation as reported on Figure 19 was .5 percent.   16:04:07

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1   Do you see that?

2   A.   Correct.

3   Q.   And then you subtract .5 percent from

4   10 percent, and over in Column 6, you record an estimated

5   underpayment of 9.5 percent; correct?   16:04:19

6   MR. GLACKIN: Object to the form.

7   THE WITNESS: Well, so you've revealed exactly

8   what I was trying to illustrate.

9   Q.   BY MR. MITTELSTAEDT: Sir, please.

10   A.   I hypothetically --   16:04:27

11   Q.   In the interest of time, would you just answer

12   the question?

13   The way you did it mechanically was to subtract

14   the .5 percent from the average 10 percent, and then you

15   recorded an estimated underpayment of 9.5 percent in   16:04:41

16   Column 6; correct?

17   A.   That's correct.

18   Q.   And so did you do anything to attempt to

19   understand the reason why the aggregate percentage change

20   in 2005 was .5 percent, which was lower than the   16:05:04

21   10-percent base period that you used?   Did you attempt to

22   understand the reason for that?

23   A.   Not in the context of this figure, but this

24   figure isn't meant to do that.

25   Q.   Sir --   16:05:20

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1   A.   Yes, the regression analysis explicitly does --

2   carries out what you described.

3   Q.   Okay.   And so when you told the Court next comes

4   the out-of-place small .5 percent increase in 2005

5   coincident with the start of the non-compete agreements,   16:05:34

6   were you suggesting or implying any causal effect between

7   the start of the non-compete agreements and the lower,

8   out-of-place small percent increase?

9   A.   Well, this is the start of that argument, but it

10   doesn't -- it isn't the end.   It is true that the .05 is   16:05:54

11   an unusually large number because of the 2004 has a 10.3

12   and 2006 has a 9.1.

13   Q.   Unusually small number?

14   A.   Unusually small number, correct.   So it stands

15   out.   That's all I'm trying to say. So if you do this   16:06:10

16   before and after comparison, you have to decide what's an

17   appropriate before period and what's an appropriate after

18   period. I just said, well, let's look at suppose 2004

19   and 2011 were the right comparisons. I'm not saying

20   that's correct because the data analysis that are carried   16:06:26

21   out is very careful to construct the appropriate before

22   and after based on a variety of variables.

23   Q. And in trying to figure out the reason for that

24   what you call out-of-place small percent increase

25   coincident with the start of the non-compete agreements,   16:06:45

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1   did you consider it useful to look at what the percent

2   change was in 2005 for the separate companies?

3   A. I did that in my regression analysis, yes.

4   Q. In your Footnote 1 to Figure 1, it says, "Change

5   in compensation measured only by" -- "only on employees   16:07:10

6   that did not switch jobs from previous year."

7   Why was that?

8   A. Well, we're trying to focus on the way the

9   cold-calling was affecting the internal structure of

10   compensation. So you want to know what percent increase   16:07:26

11   the employees experienced. And if they came from another

12   firm, you don't have the salary levels that they had in

13   the previous year.

14   Q. So by "switch jobs" there, you mean switch

15   employers?   16:07:42

16   A. Correct.

17   Q. If you'd look at the next page, page 64,

18   paragraph 142.

19   You say under "Conduct Effects" you refer to how

20   the effects vary across time, firms, and individuals.   16:08:18

21   Let's just focus on effects varying across firms.

22   How would you expect the effects of the various

23   agreements alleged here, the six pairs of bilateral

24   agreements, to vary across firms?

25   A. Well, the model has a variable that allows that   16:08:37

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1   to happen. And if you look at Figure 20, you'll see that

2   variable is in line 3, that the conduct effect is

3   interacted with the logarithm of the hiring rate. So

4   firms that have higher hiring rates have bigger

5   impacts -- smaller impacts, I think, than the ones that   16:09:00

6   have lower hiring rates.

7   Q. Would you expect the effects of the agreements

8   alleged here to vary across firms for any -- based on

9   anything other than hiring rates?

10   A. Sure.   16:09:17

11   Q. What else?

12   A. Well, I explored a variety of things trying to

13   build a model that was reliable and within the limits of

14   this data set. So there are -- you know, there are

15   several firm variables that you might consider that are   16:09:35

16   in this equation. The revenue per employee, the change

17   in revenue per employee. I'm not sure that I considered

18   each and every one of those, but I did look for other

19   variables that allowed for the conduct effect to vary

20   across firms without going all the way to complete   16:09:54

21   desegregation.

22   Q. Paragraph 137 of your first report, you refer to

23   various growth cycles.

24   Do you see that?

25   A. I do see that.   16:10:06

1   Q.   What measure do you think is appropriate to

2   determine or to measure the degree of the recession for

3   2001?

4   A.   I spent 20 years studying macroeconomic data,

5   and I can tell you that the 2002/2003 period was unusual   16:10:21

6   in the sense the GDP growth was lower and the employment

7   levels were lower; that we didn't have a real recovery in

8   that particular episode.

9   Q.   Okay. My question for the 2001 recession and

10   for the other events that you identified there is simply   16:10:39

11   going to be: What measures do you think are appropriate

12   to measure the extent or the degree of the economic

13   cycles that you refer to? So for the recession, would it

14   be GDP?

15   A.   GDP and payrolls.   16:10:58

16   Q.   Okay.

17   A.   And housing-led growth was -- housing starts.

18   Q.   Okay. Just a second. Let's go one-by-one.

19   The tepid recovery 2002/2003, what's the

20   appropriate measure?   16:11:12

21   A.   GDP and payrolls.

22   Q.   Okay. US or California?

23   A.   US.

24   Q.   And for the growth in 2004/2005?

25   A.   Housing starts.   16:11:27

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 1    STATE OF CALIFORNIA      ) ss:

 2    COUNTY OF MARIN          )

 3

 4         I, LESLIE ROCKWOOD, CSR NO. 3452, do hereby

 5    certify:

 6         That the foregoing deposition testimony was

 7    taken before me at the time and place therein set forth

 8    and at which time the witness was administered the oath;

 9         That testimony of the witness and all objections

10    made by counsel at the time of the examination were

11    recorded stenographically by me, and were thereafter

12    transcribed under my direction and supervision, and that

13    the foregoing pages contain a full, true and accurate

14    record of all proceedings and testimony to the best of my

15    skill and ability.

16         I further certify that I am neither counsel for

17    any party to said action, nor am I related to any party

18    to said action, nor am I in any way interested in the

19    outcome thereof.

20         IN WITNESS WHEREOF, I have subscribed my name

21    this 20th day of November, 2013.

22

23

24    _____

25    LESLIE ROCKWOOD, RPR, CSR NO. 3462
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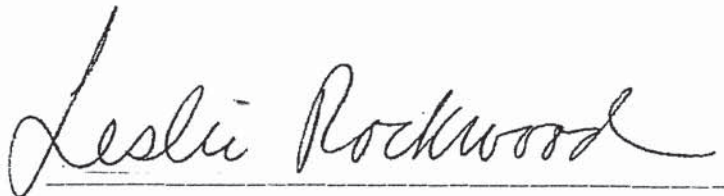
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